

REMARKS/ARGUMENTS

Claims 1 and 3-20 are active. Claim 1 is amended to incorporate Claim 2.

Claims 11 and 12 have been withdrawn but have been retained for the purposes of rejoinder consideration.

No new matter is added.

The claims are newly rejected as anticipated or obvious in view of Clariant's U.S. patent no. 6,645,476 (also referenced in the present specification on page 3 in relation to its European counterpart). A Declaration from Ms. Florence l'Alloret is attached.

This '476 patent described preferred water-soluble polymers (col. 3, lines 23-67) including AMPS and fatty alcohol polyglycol ethers (e.g., Genapol® LA-070). However, on page 4 of the above-referenced application, it is stated that "the polymers illustrated in the said document do not produce O/W emulsions with cosmetic properties that are very pleasant for the user while at the same time being very stable and easy to produce." Comparative Examples 1 and 3 in the above-referenced application shows that emulsions containing the polymer as the only emulsifier were not stable.

The '476 patent describes oil-in-water emulsions in Examples 41-43 while the other examples are water-in-oil or water-based compositions. Example 41 includes a hydrophilic co-emulsifier (sodium cocyl glutamate) and Examples 42 and 43 contain no co-emulsifiers.

The '476 patent suggests the possibility of emulsions (including oil-in-water, col. 9, lines 11-15) and the inclusion of coemulsifiers, such as sorbitan esters and others (see col. 9, lines 27-63). However, none of the Examples provided in the '476 patent include a lipophilic emulsifier and the mere suggestion to include a coemulsifier in col. 9, lines 27-63 fails to illustrate the importance of a lipophilic emulsifier as opposed to another type of emulsifier, particularly considering the rather long and general list of other surfactants, which themselves can act as emulsifiers in certain instances)

The present application provides comparative data demonstrating the importance of including a lipophilic emulsifier (see comparative Examples 1 and 3) but not other types of emulsifiers (see comparative Example 2). Even in view of what is described in the '476 patent, that a lipophilic emulsifier (further examples follow) resulted in such a dramatic difference compared to other emulsifiers could not have been reasonably predictable.

The tests submitted in the Declaration provide two additional examples of a silicone surfactant and a sucrose ester, which are two additional examples of a lipophilic emulsifier as provided in the above-referenced application.

	Example A according to the invention	Example B according to the invention
<i>Oily phase:</i>		
Cyclohexadimethylsiloxane	6	6
Parleam® oil	9	9
sucrose tristearate (RYOTO SUGAR ESTER S 370 from Mitsubishi)	0.5	-
PEG/PPG 18/18 dimethicone (DOW CORNING 5225C FORMULATION AID)	-	0.5
<i>Aqueous phase</i>		
Copolymer of AMPS and of Genapol LA-070 methacrylate (with 8.5 mol% of monomer of formula II)	1	1
Triethanolamine as an aqueous 10% solution	0.06	0.06
Preserving agents	1	1
Water	qsp 100%	qsp 100%
pH	6.65	6.51
Viscosity	107.5 cPoises	188 cPoises

The compositions obtained are in the form of fine and stable emulsions (fluid milk), the viscosity of each composition being measured using a Rheomat 180 machine at 25°C at a shear rate of 200 s⁻¹ using a No. 2 spindle.

While only a few examples of a composition of the invention are provided that demonstrate why a lipophilic emulsifier was so much better than other emulsifiers, the examples provided in the application along with those presented here demonstrate a trend

from which one can conclude that similar stable compositions would result based on the combination as described in the application. See *In re Kollman*,¹

We feel that the unobviousness of a broader claimed range can, in certain instances, be proven by a narrower range of data. Often, one having ordinary skill in the art may be able to ascertain a trend in the exemplified data which would allow him to reasonably extend the probative value thereof. The proof, thus considered, might then be sufficient to rebut a PTO holding of prima facie obviousness. 595 F.2d at 56, 201 USPQ at 199.

See also *Ex parte Winters*, 11 USPQ2d 1387, 1388 (Bd. App. & Inter. 1989) (In order to prove non-obviousness for a genus of compounds, only *representative* species need be shown.).

Withdrawal of the rejections and a Notice of Allowance is requested.

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,
MAIER & NEUSTADT, P.C.
Norman F. Oblon



Daniel J. Pereira, Ph.D.
Attorney of Record
Registration No. 45,518

Customer Number
22850

Tel: (703) 413-3000
Fax: (703) 413-2220
(OSMMN 08/07)

¹ 595 F.2d 48, 201 USPQ 193 (Fed. Cir. 1979).